

### **REMARKS**

Claims 1-8 and 10 are pending in the above application. Claim 10 has been amended to address an antecedent basis issue that was not previously noted.

The Office Action dated October 11, 2006, has been received and carefully reviewed. Each issue raised in that Office Action is addressed below.

### **REQUEST FOR REVIEW BY SUPERVISORY PATENT EXAMINER**

The current Office Action is the third non-final Office Action to issue in the above case. In addition, as discussed below, Applicant's arguments from the previous Reply have not been addressed. As provided by MPEP 707.02, "The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office action with a view to finally concluding its prosecution." It is respectfully requested that the examiner's SPE check on the pendency of this application as required by the MPEP so that the application can be allowed or so that clear issues for appeal can be developed.

### **THE SUBSTANCE OF APPLICANT'S ARGUMENTS HAS NOT BEEN ADDRESSED**

Section 707.07(f) of the MPEP provides that "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." The present Office Action includes a "Response to Arguments" section. However, the arguments addressed in that section are not the arguments that were presented by Applicant. The specific differences are addressed below. It is respectfully submitted that, if all claims are not allowed, the next Office Action should be non-final and should address the arguments from this Reply and from Applicant's August 1, 2006, Reply.

### **REJECTIONS UNDER 35 U.S.C. 102(b)**

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Berstis. Claim 1 requires an electronic copyrighted work sales apparatus that includes, among other elements, 1) a copyright royalty information storage unit storing copyright royalty information of an electronic

copyrighted work and 2) a copyright royalty calculation unit calculating a copyright royalty of an electronic copyrighted work selected through said manipulation unit based on the copyright royalty information stored in said copyright royalty information storage unit. As argued in the previous Reply, Berstis does not show the use of copyright royalty information stored in a copyright royalty information storage unit for copyright royalty calculations. The Office Action asserts that Berstis' royalty account, discussed at column 8, lines 8-10 and 21-26, corresponds to the claimed copyright information storage unit. Berstis' royalty account stores information regarding the royalty due for a particular owner ("A control routine then adjusts the given royalty value in a given provider account in response to receipt of an indication that a given digital file associated with the given content provider has been transferred from a source 24 to a target rendering device 26 in a given client computer." column 8, lines 21-26). The Office Action further asserts that Berstis shows a copyright royalty calculating unit because users pay for copies of a digital file. However, these portions of Berstis in no manner show that a copyright royalty is calculated based on the information stored in information a copyright royalty information storage unit. Under this interpretation, Berstis would have to calculate a copyright royalty based on the information stored in the Berstis' royalty account. No such calculations or calculating unit as claimed is present in Berstis, and claim 1 is submitted to be allowable over Berstis for at least this reason.

In the "Response to Argument" section of the Office Action, the examiner characterizes Applicant's arguments as "Berstis fails to teach 'any unit for performing royalty rate calculations.'" The complete argument, based on the language of the pending claims, is that Berstis fails to teach "any unit for performing royalty rate calculations on this information as required by claim 1." The recited "this information" is the copyright royalty information stored in a copyright royalty information storage unit. Applicant maintains that Berstis fails to teach an electronic copyrighted work sales apparatus as recited in claim 1 and that claim 1 is allowable over Berstis for at least this reason. If this rejection is maintained, it is respectfully requested that the examiner explain how Berstis uses the information in the royalty account discussed at column 8, lines 8-10 to calculate royalties.

Claims 2-7 depend from claim 1 and are submitted to be allowable for at least the same reasons as claim 1.

Claim 2 further distinguishes over Berstis by reciting a “sales information recording unit recording sales status of a relevant electronic copyrighted work sales apparatus.” In responding to Applicant’s arguments, the Office Action does not address the last two words of the above quote. The claim does not discuss sales information of a “copyrighted work,” but rather sales information of a “copyrighted work sales apparatus.” The Office Action indicates that Berstis teaches this aspect of the invention by adjusting the account of a content provider. While the amount of money in the account of a content provider may vary with the total number of copies of content made, this account value provides no information about sales of a relevant electronic copyrighted work sales apparatus as required by claim 2. Claim 2 is submitted to be allowable over the art of record for at least this reason. If the rejection is maintained, it is respectfully requested that the examiner explain where Berstis discloses a sales information recording unit recording sales of a sales apparatus as recited in claim 2.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Berstis. Claim 8 requires a copyright management apparatus that includes, inter alia, a copyright royalty data approval processing unit causing said communication unit to transmit to an external source copyright royalty data recorded in said copyright royalty data recording unit after an approval of said copyright royalty data stored in said copyright royalty data storage unit is received. The response to arguments section of the Office Action indicates that a copyright holder may receive a fee when his works are copied. The fact that the copyright owner may receive a fee in no manner shows a copyright management apparatus that includes a copyright royalty data approval processing unit that causes a previously recited communication unit to transmit to an external source copyright royalty data recorded in the copyright royalty data recording unit after an approval of said copyright royalty data stored in said copyright royalty data storage unit is received. Berstis in no manner suggests that the copyright royalty data stored in the copyright royalty data recording unit is ever approved; it appears that the information is merely sent periodically.

No element corresponding to the above limitation has been identified in Berstis, and no element corresponding to this limitation appears to be present in Berstis. For at least this reason, claim 8 is submitted to be allowable over Berstis. If this rejection is not withdrawn, it is respectfully requested that the examiner identify the element in Berstis's copyright management apparatus that is believed to correspond to the above described copyright royalty data approval processing unit so that this rejection can be better understood.

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Berstis. Claim 10 recites a system comprising 1) an electronic copyrighted work sales apparatus, 2) a copyright management apparatus, 3) a seller terminal and 4) a copyright holder terminal. The Office Action appears to indicate that 1) Berstis' storage device constitutes a copyrighted work sales apparatus, 2) Berstis' central authority corresponds to the claimed copyright management apparatus, 3) Bersis' rendering device corresponds to a seller terminal and 4) Berstis' copyright holder terminal is somehow disclosed at column 8, lines 14-25 where the setting up of a royalty account for a copyright owner is discussed. However, no structure corresponding to a copyright holder terminal is discussed at this portion of the reference.

Claim 10 further requires that the copyright work sales apparatus includes certain elements, including a copyright royalty information storage unit and a copyright royalty calculation unit. These elements are not shown or suggested by Berstis for the same reasons provided above in connection with claim 1.

In addition, claim 10 requires that the recited copyright management apparatus include certain elements. These elements must be present in Berstis' "central authority" under the interpretation being used by the examiner. However, Berstis in no manner suggests that his central authority includes at least a copyright royalty data approval processing unit causing a second communication unit to transmit copyright royalty data recorded in a copyright royalty data storage unit to a seller terminal when the copyright royalty data stored in the copyright royalty data storage unit is approved from the copyright holder terminal. Claim 10 is submitted to be allowable over Berstis for at least this reason.

REJECTIONS UNDER 35 U.S.C. 103(a)

Claim 7 is rejected under 35 U.S.C. 103(a) in view of Berstis in combination with Official Notice. Claim 7 requires that a copyright work data write unit writes electronic copyrighted work data sequentially into a plurality of recording media stored in a recording media storage unit. The Office Action takes Official Notice of the fact that hard drives can be partitioned. This statement may be correct. However, the fact that one can partition a hard drive in no manner suggests that one should modify Berstis by partitioning his hard drive and then writing copyrighted work data sequentially into the different hard drive partitions. A proper motivation for modifying Berstis in view of Official Notice has not been provided, and claim 7 is submitted to be allowable over the art of record for at least this reason.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis in view of Powell. Claims 3-6 depend from claim 1. Powell does not address the shortcomings of Berstis discussed above in connection with claim 1. Claims 3-6 are therefore submitted to be allowable for at least the same reasons as claim 1.

Claim 4 further distinguishes over Berstis in view of Powell by requiring “wherein said sales information control unit reads out the sales status recorded in said sales information recording unit by reading out and executing a portion of a program corresponding to the identification information stored in said identification information storage unit and a remaining portion of said program recorded in said sales information readout card. The underlined portion of the limitation from claim 4 is not mentioned in the Office Action and is not shown or suggested by Powell. Claim 4 is submitted to be allowable over Berstis and Powell for this reason as well.

Claim 5 further distinguishes over Berstis in view of Powell by reciting “a sales information control unit sensing attachment of a sales information management card corresponding to identification information stored in said identification information storage unit, and reading out and then deleting the sales status recorded in said sales information recording unit. Powell discloses the writing of sales information to a customer’s card so that that information can be read by another machine at a later time. When the card is read by a second machine, data from the first machine is erased from the customer’s card. This is what is

discussed at the cited portion of Powell, column 4, lines 35-40. Powell in no manner suggests that sales information be deleted from the first machine which would be required by the interpretation of Powell being used in the rejection. Claim 5 is submitted to further distinguish over Berstis in view of Powell for this reason.

Claim 6 includes limitations similar to those found in claims 4 and 5 and is submitted to be allowable for at least the reasons provided above in connection with claims 4 and 5.

### CONCLUSION

Each issue raised in the Office Action dated October 11, 2006, has been addressed, and it is believed that claims 1-8 and 10 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the examiner is respectfully requested to contact Scott Wakeman (Reg. No. 37,750) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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